Petition

81-2023

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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NO.

in the Supreme Court of the United States

October Term, 1981

THOMAS HARTWELL LILES,
MICHAEL HAROLD JONES, and
JOHN RICHARD SALANE,
Petitioners,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Should a federal narcotics statute, 21 *U.S.C.* §955a, be construed to repeal by implication two separate treaties wherein the United States expressly renounced jurisdiction over certain maritime zones?

2. Where a federal narcotics statute, 21 *U.S.C.* §955a(f), confers trial jurisdiction upon the district court in whose district a defendant "enters," should such entry be deemed to encompass a coerced entry against the defendant's will?

3. Does a federal statute, 14 *U.S.C.* §89(a), which authorizes the Coast Guard to search vessels without probable cause, violate the fourth amendment either on its face or as applied in this case?

4. Does Congress have the constitutional power to enact a statute, 14 *U.S.C* §89(a), which purports to extend the Coast Guard's authority anywhere on the global high seas?

5. Inasmuch as the Coast Guard is part of the Customs Service, can a statute regarding the Coast Guard, 14 *U.S.C.* §89(a), be construed without reference to Customs Service regulations?

6. Absent evidence that defendants found in possession of drugs intended to use or distribute these drugs within the territorial United States, does Congress have the power to proscribe, and do the United States courts have the power to punish, such possession?

7. Can a conviction for possession of drugs with intent to distribute them be sustained without evidence of control over the drugs, or even knowledge of their presence, by the defendant?

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OPINIONS BELOW

The opinion below by the United States Court of Appeals for the Eleventh Circuit, rendered March 15, 1982, has been designated for publication but has not been published at the time of the submission of this petition. A copy of this opinion is set out in full in the Appendix. No opinions were written by the United States District Court for the Southern District of Florida imposing judgments of conviction on petitioners on April 20, 1981.

JURISDICTION

Petitioners seek review of a judgment of the United States Court of Appeals for the Eleventh Circuit, dated March 15, 1982, affirming petitioners' convictions for violations of 18 *U.S.C.* §2 (1976) and 21 *U.S.C.* §955a (Supp. IV 1980). Jurisdiction is conferred upon this Court by 28 *U.S.C.* §1254(a) (1976).

CONSTITUTIONAL PROVISIONS, TREATIES AND STATUTES INVOLVED

U.S. Const. amend. IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Single Convention on Narcotic Drugs art. 36(a)(iv), *T.I.A.S.* 6298, 18 *U.S.T.* 1407, 1425 (entered into force June 24, 1967):

> 2. Subject to the constitutional limitations of a Party, its legal system and domestic law,
>
> (a) . . .
>
> (iv) Serious offences heretofore referred to committed either by nationals or by foreigners shall be prosecuted by the Party in whose territory the offence was committed, or by the Party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the Party to which application is made, and if such offender has not already been prosecuted and judgement given.

Maritime Boundary Agreement, *T.I.A.S.* 8627, 28 *U.S.T.* 5285 (entered into force April 27, 1977):

CUBA

Maritime Boundary

Modus vivendi effected by exchange of letters
Signed at Havana April 27, 1977;
Entered into force April 27, 1977.

The Assistant Secretary of State for Inter-American Affairs to the Cuban Vice-Minister, Ministry of Foreign Affairs

CITY OF HAVANA, CUBA, *April 27, 1977*

EXCELLENCY:

I have the honor to refer to negotiations which have taken place between our two delegations regarding the need to establish a maritime boundary between the United States of America and the Republic of Cuba as a result of the enactment by the Government of the United States of Public Law 94-265 on April 13, 1976, and by the Government of Cuba of Decree-Law No. 2 of February 24, 1977.

Both sides are in agreement that more technical work is needed before a provisional line can be established, and both have agreed to exchange nautical charts and other appropriate technical data at the earliest practicable time to assist in developing it. Further meetings are contemplated to fix the coordinates of the line with the objective of concluding this work during the course of 1977. In the meantime, I propose as a *modus vivendi* for 1977 that the simplified line described by the coordinates set out below be accepted as our maritime boundary:

1. 23°56′24″N
   81°13′27″W
2. 23°50′00″N
   81°50′00″W
3. 23°50′00″N
   83°12′10″W

4. 23°51′11″N
   83°10′13″W
5. 23°52′49″N
   83°31′09″W
6. 23°54′12″N
   83°39′45″W
7. 23°56′09″N
   83°48′16″W
8. 23°56′11″N
   83°48′23″W
9. 23°58′20″N
   83°55′52″W
10. 24°03′18″N
    84°11′20″W
11. 24°10′22″N
    84°29′19″W
12. 24°12′56″N
    84°35′44″W
13. 24°14′17″N
    84°38′37″W
14. 24°40′23″N
    85°31′20″W
15. 24°51′56″N
    85°53′45″W
16. 25°10′29″N
    86°27′25″W
17. 25°13′03″N
    86°32′08″W

It shall be understood by the two Governments that on the north side of the line Cuba would not, and on the south side of the line the United States would not, for any purpose, claim or exercise sovereign rights or jurisdiction over the waters or seabed and subsoil.

Except for the understanding in the preceeding [*sic*] paragraph each side reserves its position with respect to the law of the sea.

If the above-mentioned points are acceptable to your side, I have the honor to propose that this letter and your reply constitute an agreement between the two Governments.

Accept, Excellency, the assurances of my highest consideration.

TERENCE A. TODMAN

DR. PELEGRIN TORRAS
Vice-Minister
Ministry of Foreign Affairs of the Republic of Cuba
Havana
Cuba

Title 14 *U.S.C.* §89(a) (1976):

The Coast Guard may make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention, detection, and suppression of violations of laws of the United States. For such purposes, commissioned, warrant, and petty officers may at any time go on board of any vessel subject to the jurisdiction, or to the operation of any law, of the United States, address inquiries to those on board, examine the ship's documents and papers, and examine,

inspect, and search the vessel and use all necessary force to compel compliance. When from such inquiries, examination, inspection, or search it appears that a breach of the laws of the United States rendering a person liable to arrest is being, or has been committed, by any person, such person shall be arrested or, if escaping to shore, shall be immediately pursued and arrested on shore, or other lawful and appropriate action shall be taken; or, if it shall appear that a breach of the laws of the United States has been committed so as to render such vessel, or the merchandise, or any part thereof, on board of, or brought into the United States by, such vessel, liable to forfeiture, or so as to render such vessel liable to a fine or penalty and if necessary to secure such fine or penalty, such vessel or such merchandise, or both, shall be seized.

Title 21 *U.S.C.* §955(a) (Supp. IV 1980):

It is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States on the high seas, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

Title 21 *U.S.C.* §955a(f) (Supp. IV 1980):

Any person who violates this section shall be tried in the United States district court at the point of entry where that person enters

the United States, or in the United States District Court for the District of Columbia.

STATEMENT OF THE CASE

On December 10, 1980, petitioners were sailing aboard the vessel *Little Brooke*, approximately thirty miles southeast of Cuba and 350-400 miles from the coast of Florida, when they were accosted by the Coast Guard cutter *Decisive*. Several Coast Guardsmen boarded the *Little Brooke*, and, although having neither a warrant nor reason to suspect any irregularities, searched the vessel. The search uncovered a cache of marijuana on board, whereupon petitioners were taken into custody.

An indictment was handed down on December 29, 1980. The indictment charged petitioners with knowingly and intentionally possessing marijuana with intent to distribute, in violation of 18 *U.S.C.* §2 (1976), and 21 *U.S.C.* §955a (Supp. IV 1980). At their arraignment on December 31, 1980, petitioners pled not guilty.

Petitioners were tried jointly in the United States District Court for the Southern District of Florida, before the Honorable Charles B. Fulton, in a trial which ran from March 31, 1981, until April 2, 1981. At the close of the government's evidence, petitioners' attorney moved for a judgment of acquittal, challenging, *inter alia*, the constitutionality of 14 *U.S.C.* §89(a) and the propriety of applying 21 *U.S.C.* §955a to an area over which the United States had, by treaty with Cuba, renounced jurisdiction. The motion was denied. At the close of all the evidence, this motion was renewed, and

again denied. The case was then submitted to the jury, which found petitioners guilty as charged. On April 20, 1981, petitioners were sentenced: petitioner Liles was sentenced to serve five years in prison; petitioner Jones, three years; and petitioner Salane, two years.

A notice of appeal was timely filed with the United States Court of Appeals for the Fifth Circuit on April 27, 1981. All of the questions presented to this Court were raised on appeal. On March 15, 1982, the United States Court of Appeals for the Eleventh Circuit (which had, in the interim, succeeded to those appeals pending from the federal district courts in Florida) entered a judgment affirming petitioners' convictions.

REASONS FOR GRANTING THE WRIT

At least three independent reasons render the case at bar a worthy one for review by this Court. First, the case at bar presents an issue of first impression with respect to a major federal statute of overwhelming national importance. Second, it implicates sensitive considerations of international maritime law, an area particularly well-suited for Supreme Court adjudication. And third, it offers an opportunity for this Court to fill a significant gap in its recent holdings concerning the constitutionality of federal statutes which purport to authorize warrantless searches. Each of these points will be addressed in turn.

I. THE CASE AT BAR PRESENTS AN ISSUE OF FIRST IMPRESSION WITH RESPECT TO A MAJOR FEDERAL STATUTE OF OVERWHELMING NATIONAL IMPORTANCE.

Title 21 *U.S.C.* §955a, which became effective on September 15, 1980, was enacted in response to what Congress regarded as a "drug war at sea," "crisis," and "catastrophe and overwhelming drug disaster" in the southeastern United States. H.R. Rep. No. 323, 96th Cong., 1st Sess. 3, 5, 6 (1979). Its propriety and scope, therefore, are timely issues whose resolution has vast national and international importance and certiorari should be granted to treat them. *See United States v. Donovan*, 429 U.S. 413, 422 (1977) (certiorari granted "to resolve . . . issues which concern the construction of a major federal statute"); *American Federation of Musicians of the United States and Canada v. Wittstein*, 379 U.S. 171, 175 (1964) (certiorari granted to consider "an important [question] of first impression under the LMRDA").

II. THE CASE AT BAR IMPLICATES SENSITIVE CONSIDERATIONS OF INTERNATIONAL MARITIME LAW.

The *Maritime Boundary Agreement*, *T.I.A.S.* 8627, 28 *U.S.T.* 5285 (entered into force April 27, 1977), between the United States and Cuba provides that the United States renounces sovereign rights or jurisdiction "for any purpose" south of a specified line in the Straits of Florida:

> It shall be understood by the two Governments that on the north side of the line Cuba would not, and *on the south side of the line the United States would not, for any purpose, claim or exercise sovereign rights or jurisdiction over the waters* or seabed and subsoil.
>
> 28 *U.S.T.* at 5286 (emphasis added).

As acknowledged in the opinion below by the Court of Appeals for the Eleventh Circuit, the seizure of the *Little Brooke* occurred south of the line established by the *Maritime Boundary Agreement.* (App. at A-12.) Thus, as applied in the present case, 21 *U.S.C.* §955a effectively repudiates *sub silentio* a formal treaty with Cuba.

The United States' express renunciation of jurisdiction in the *Maritime Boundary Agreement* with Cuba assumes even greater significance, moreover, in view of the United States' earlier agreement with Cuba not to prosecute drug offenses occurring beyond United States territory. Article 36(2)(a)(iv) of the *Single Convention on Narcotic Drugs, T.I.A.S.* 6298, 18 *U.S.T* 1407 (entered into force June 24, 1967), a multilateral treaty to which both the United States and Cuba are signatories, *see* U.S. Dep't of State, *Treaties in Force: A List of Treaties and Other International Agreements of the United States on January 1, 1979* 306-07 (U.S. Gov't, Printing Office, Pub. 8968, 1979), provides that drug offenses, including the possession of marijuana with intent to distribute, "shall be prosecuted by the Party in whose territory the offence was committed. . . ." Again, therefore, by interpreting 21 *U.S.C.* §995a to proscribe conduct within waters over which the United States ceded to Cuba

sovereignty and jurisdiction "for any purpose," the courts below imputed to Congress the implied intent to renege on a solemn agreement with a foreign power.

This would not be the first occasion where this Court has been called upon to correct the erroneous application of a federal statute to a subject over which the United States has earlier ceded jurisdiction pursuant to a maritime treaty with a Latin American country. *See McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963). Regrettably, this Court is once again confronted with the necessary task of underscoring the axiom which one would think had been settled by *McCulloch, viz.*, that, when faced with the temptation of extending domestic law to matters of international maritime concern, courts must exercise forebearance. *Lauritzen v. Larsen*, 345 U.S 571, 582 (1953).

III. THE CASE AT BAR OFFERS AN OPPORTUNITY FOR THIS COURT TO FILL A SIGNIFICANT GAP IN ITS RECENT HOLDINGS CONCERNING THE CONSTITUTIONALITY OF FEDERAL STATUTES WHICH PURPORT TO AUTHORIZE WARRANTLESS SEARCHES.

Within the past decade, this Court has addressed the constitutionality *vel non* of federal statutes purporting to authorize warrantless searches in a variety of contexts. *See, e.g., Donovan v. Dewey*, ____ U.S. ____, 101 S.Ct. 2534 (1981); *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978); *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973). Title 14 *U.S.C.* §89(a), however, which gives the

Coast Guard free rein to board and search ships without a warrant, has escaped this Court's attention. As a consequence, the constitutionality of §89(s) remains, in the apt words of one commentator, "at sea." *See* Carmichael, "At Sea With the Fourth Amendment," 32 *U. Miami L. Rev.* 51 (1977).

The absence of guidance by this Court has allowed the lower courts to subvert the fourth amendment to the practical demands of winning the drug war. *See generally* Comment, "The Doctrine of Self-Executing Treaties and *U.S. v. Postal*: Win at Any Price?" 74 *Am. J. Int'l L.* 892 (1980). The case at bar, indeed, is "symptomatic of [the] legal reaching which the courts have felt obliged to perform in order to allow the Coast Guard to control the problem of drug smuggling into the United States by sea." Note, "Free Navigation: Examination of Recent Actions of the United States Coast Guard," 13 *Vand. J. Transnat'l L.* 141, 170-71 (1980). Encouraged by the attitude of the lower courts, Coast Guard officials have come to regard 14 *U.S.C.* §89(a) as a *carte blanche* for warrantless searches. Illustrative is the testimony at petitioners' trial of Lieutenant Commander Allan Boetig, who formed the boarding party which searched the *Little Brooke*. On direct examination, Lieutenant Commander Boetig testified as follows:

> Q Did you give any instructions to the boarding party?
>
> A None, sir. Our standard policy covers it, that they are to check for compliance with the U.S. laws.

Q Can you tell us what kind of things you are checking compliance for?

A Yes, sir. *Our basic law enforcement mandate comes under Title 14, U.S. Code 89.*

Practical things that we get into are *we check everything* from boating, safety-type equipment and everything from life jackets to marine sanitation devices to possible any kind of contraband. *We enforce the whole gambit of Federal regulations on the high seas. That is our jurisdiction.*

(Transcript, April 1, 1981 at 207-08) (emphasis added).

The free rein afforded by 14 *U.S.C.* §89(a) troubles not only legal scholars, but also federal judges. In *United States v. Warren*, 578 F.2d 1058 (5th Cir. 1978) *(en banc), modified on other grounds*, 612 F.2d 887 (5th Cir.) *(en banc), cert. denied*, 446 U.S. 956 (1980), for example, Judge Fay, joined by Judges Goldberg and Morgan, expressed grave constitutional misgivings with regard to the majority's view of §89(a) as a "plenary" source of Coast Guard power:

> The majority opinion states flatly that the power of the Coast Guard to apprehend any vessel of the American flag is "plenary." Majority opinion p. 1064. The opinion also states without reservation that §89(a) is constitutional. *Id.* A close examination of §89(a), however, reveals that it would authorize the Coast Guard to seize any American vessel anywhere in the world without probable cause and for no purpose

> whatsoever other than to conduct a full scale search for possible drug or other criminal violations. . . .
>
> The majority's refusal to establish constitutional limitations on search and seizure on the high seas creates an extraordinary and anomalous result. The majority apparently is willing to give the Coast Guard unfettered discretion to seize American vessels on the high seas even though we must be aware of the fact that the Supreme Court [in *Almeida-Sanchez v. United States, supra*] has said that such a grant of discretion to a Border Patrol officer on a roving patrol would be unconstitutional.
>
> 578 F.2d at 1080 (Fay, J., dissenting).

Unless this Court is prepared to allow the fourth amendment to continue to flounder at sea, therefore, the case at bar should be reviewed on its merits.

CONCLUSION

For the reasons enumerated above, petitioners pray that a writ of certiorari be issued.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this __ day of April, 1982, mailed three copies of this petition, first class postage prepaid, to each of the following:

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1981

THOMAS HARTWELL LILES,
MICHAEL HAROLD JONES, and
JOHN RICHARD SALANE,
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vs.

THE UNITED STATES OF AMERICA,
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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

APPENDIX

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Opinion of the United States Court of Appeals for the Eleventh Circuit, March 15, 1982 ..... A-3

United States Court of Appeals
Eleventh Circuit

No. 81-5391

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

THOMAS HARTWELL LILES,
MICHAEL HAROLD JONES, and
JOHN RICHARD SALANE,
Defendants-Appellants.

March 15, 1982.

VANCE, Circuit Judge:

Thomas Hartwell Liles, Michael Harold Jones, and John Richard Salane appeal their convictions after trial by jury of one count of possession of marijuana on an American vessel with intent to distribute in violation of 21 U.S.C. §955a and 18 U.S.C §2.[1] We affirm

On December 10, 1980 the Coast Guard cutter DECISIVE, on patrol on the high seas approximately thirty miles southeast of Cuba, stopped and boarded a forty-four foot American sailing vessel, the LITTLE BROOKE, to check for compliance with United States laws. Appellants were the only people aboard the vessel.

[1]Liles was sentenced to five years in prison. Jones and Salane were each sentenced to three years in prison.

As the boarding party approached the LITTLE BROOKE, they were able to smell marijuana. After boarding, they discovered that the main cabin was virtually packed with approximately 4,800 pounds of marijuana. Appellants were arrested and taken to Miami.

At trial, Liles testified that he loaded the ship with marijuana while at port in Jamaica with the help of a Jamaican customs official who agreed to meet him in Nassau to unload the cargo. He further testified that he was the owner of the vessel and that he purposefully kept Jones and Salane in the dark about the presence of marijuana on the ship. Jones and Salane both testified that they did not realize that the LITTLE BROOKE carried marijuana until the ship was three to five miles out to sea. Salane stated that he told Liles of his intention to depart from the vessel on a dinghy at the first sight of land.

Appellants raise a number of objections to their convictions.[2]

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[2]Four of their objections are squarely foreclosed by precedent binding upon this court. We therefore mention them only in passing. Appellants' objection to the legality of the extraterritorial application of 21 U.S.C. §955a is untenable in light of our decision today in *United States v. Riker*, slip op. p. __, ____ F.2d ____ [No. 81-5185] (11th Cir. 1982). Their three challenges to the authority of the Coast Guard to stop and board the vessel have been foreclosed by *United States v. One (1) 43 Foot Sailing Vessel*, 405 F. Supp. 879, 882-83 (S.D. Fla. 1975) (Coast Guard has authority under 14 U.S.C. §89(a) to stop and board American vessels on the high seas), *aff'd per curiam*, 538 F.2d 694 (5th Cir. 1976); *United States v. Jonas*, 639 F.2d 200, 202-03 (5th Cir. 1981) (boarding of American vessels by the Coast Guard on the high seas need not be predicated upon reasonable suspicion); and *United States v. Postal*, 589 F.2d 862, 885 & n. 37 (5th Cir.), *cert. denied*, 444 U.S. 832, 100 S.Ct. 61, 62 L.Ed.2d 40 (1979) (authority of the Coast Guard is not limited by 19 C.F.R. §162.3(a)).

I.

Appellants contend that venue was improper in the southern district of Florida. They argue that the venue provision of 21 U.S.C. §955a[3] should be read *in pari materia* with the venue provision of the Immigration and Nationality Act, 8 U.S.C. §1329.[4] Courts interpreting the latter provision have held that a defendant may be tried only in a district into which he has voluntarily entered. *See, e.g., United States v. Vasilatos*, 209 F.2d 195, 197 (3d Cir. 1954). Since appellants entered the southern district of Florida involuntarily, i.e., under arrest for violating 21 U.S.C. §955a, they contend that trial could not be held in that district.

The fallacy of this argument is plain. The venue provision of the Immigration and Nationality Act ensures that a defendant will be tried in the district in which he

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[3]21 U.S.C. §955a(f) provides:

> Any person who violates this section shall be tried in the United States district court at the point of entry where that person enters the United States, or in the United States District Court for the District of Columbia.

[4]8 U.S.C. §1329 provides in pertinent part:

> [P]rosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with a violation under section 1324 or 1326 of this title may be apprehended.

The substantive offenses under the Immigration and Nationality Act include entry by an alien into the United States at a time or place other than that designated by immigration officials. 8 U.S.C. §1325.

commits the offense. The offense itself consists of voluntarily entering the United States in violation of the immigration laws. Under 21 U.S.C. §955a, however, voluntary entry into the United States is not an element of the offense. To the contrary, the offense consists of violating the narcotics laws on the high seas which are by definition outside the United States or any district thereof. *United States v. Louisiana*, 394 U.S. 11, 22-23 89 S.Ct. 773, 780-81, 22 L.Ed.2d 44 (1969). Appellants' reliance upon cases under the Immigration and Nationality Act is therefore misplaced.

If the venue provision of section 955a is to be read *in pari materia* with any other statute, that statute should be 18 U.S.C. §3238,[5] the venue provision for crimes committed on the high seas. Courts interpreting section 3238 have consistently held that venue is proper in any district into which a defendant is brought after his arrest on the high seas. *E.g., United States v. Erwin*, 602 F.2d 1183, 1185 (5th Cir. 1979), *cert. denied*, 444 U.S. 1071, 100 S.Ct. 1014, 62 L.Ed.2d 752 (1980); *United States v. Williams*, 589 F.2d 210, 212-13 & n. 2 (5th Cir. 1979), *adopted in relevant part*, 617 F.2d 1063 (5th Cir. 1980) (en banc).

Venue was therefore proper in the southern district of Florida irrespective of whether appellants' entry into that district was voluntary.

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[5]18 U.S.C. §3238 provides in pertinent part:

> The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district in which the offender . . . is arrested or first brought . . . .

II.

Appellants contend that the application of 21 U.S.C. §955a to their case is inconsistent with treaty obligations of the United States. They argue that section 955a should be construed in a manner consistent with those obligations. *See Sociedad Nacional de Marineros de Honduras v. McCulloch*, 201 F.Supp. 82, 89 (D.D.C. 1962), *aff'd*, 372 U.S. 10, 83 S.Ct. 671, 9 L.Ed.2d 547 (1963); *United States v. White*, 508 F.2d 453, 456 (8th Cir. 1974).

Appellants point to two treaties which, they allege, should restrict the scope of section 955a: the Maritime Boundary Agreement, April 27, 1977, United States-Cuba, 28 U.S.T. 5285, T.I.A.S. No. 8627; and the Single Convention on Narcotic Drugs (Single Convention), *opened for signature* March 30, 1961, 18 U.S.T. 1407, T.I.A.S. No. 6298, 50 U.N.T.S. 204 (enforced with respect to United States June 24, 1967). The Maritime Boundary Agreement between the United States and Cuba provides that the United States renounces the exercise of sovereign rights south of a specified line in the Straits of Florida.[6] Since the seizure of the LITTLE BROOKE occurred

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[6]The Maritime Boundary Agreement, after identifying the coordinates of a line in the Straits of Florida, states:

> It shall be understood by the two Governments that on the north side of the line Cuba would not, and on the south side of the line the United States would not, for any purpose, claim or exercise sovereign rights or jurisdiction over the waters or seabed or subsoil.
>
> Except for the understanding in the preceding paragraph each side reserves its position with respect to the law of the sea.

south of that line, appellants contend that their crime, if any, occurred within an area that the United States had ceded to Cuban jurisdiction. Additionally, article 36 of the Single Convention provides that serious narcotics offenses should be prosecuted in the nation in whose territory the offense is committed.[7] Appellants argue that this treaty provision requires that they be prosecuted in Cuba, not in the United States.

We conclude that the application of 21 U.S.C. §955a to this case is not inconsistent with the obligations contained in either treaty. The LITTLE BROOKE is an American flag ship. Under well established principles of international law, the jurisdiction of the United States to prosecute crimes on board ship is concurrent with the jurisdiction of the nation in whose waters the crime occurs. *United States v. Flores*, 289 U.S. 137, 157-59, 53 S.Ct. 580, 585-86, 77 L.Ed. 1086 (1933); *Mali v. Keeper of the Common Jail, (Wildenhus's Case)*, 120 U.S. 1, 11-12, 7 S.Ct. 385, 387, 30 L.Ed. 565 (1887); *United States v. Reagan*, 453 F.2d 165, 169-71 & n. 2 (6th Cir. 1971), *cert. denied*, 406 U.S. 946, 92 S.Ct. 2049, 32 L.Ed.2d 334 (1972). Even assuming, therefore, that Cuba had jurisdiction over the crime committed aboard the LITTLE BROOKE, the United States had concurrent jurisdiction. No provision of either treaty expressly or by implication

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[7]Article 36(2)(a)(iv) of the Single Convention provides:

> Serious offenses heretofore referred to committed either by nationals or by foreigners shall be prosecuted by the Party in whose territory the offense was committed . . . .

prohibits the operation of the law of the flag principle to confer jurisdiction upon the United States in this case.[8]

III.

Appellants challenge the sufficiency of the evidence against them. There can be no question that the evidence was sufficient to convict Liles, the owner of the vessel who admitted at trial that he loaded the marijuana onto the LITTLE BROOKE. *See United States v. MacPherson*, 664 F.2d 69, 73 (5th Cir. 1981). Nor do we believe that there is any serious question as to the sufficiency of the evidence to convict the two remaining appellants. Jones and Salane were two members of a three member crew aboard a small sailing craft so laden with marijuana that the Coast Guard boarding crew could smell the substance before coming aboard. The jury was certainly entitled to disbelieve their unlikely story that they were unaware of the marijuana until

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[8]Given our resolution of the issue, we need not decide whether the Single Convention is self-executing, *cf. United States v. Postal*, 589 F.2d 862, 864 (5th Cir.), *cert. denied*, 444 U.S. 832, 100 S.Ct. 61, 62 L.Ed.2d 40 (1979) (article 6 of the Convention on the High Seas is not self-executing), or whether the Maritime Boundary Agreement confers upon Cuba any sovereign rights with respect to the waters thirty miles from her shore, *cf. Plaisance v. United States*, 433 F.Supp. 936, 938-39 (E.D. La. 1977) (United States does not recognize national boundaries to extend in excess of three miles off shore). We also need not decide whether any rational construction of the term "territory" as it is used in article 36 of the Single Convention would support appellants' contention that the crime was committed in Cuban territory.

they were several miles from shore. *See United States v. Robbins*, 629 F.2d 1105, 1106 (5th Cir. 1980). The evidence was more than sufficient to sustain their convictions. *See United States v. Mazyak*, 650 F.2d 788, 791 (5th Cir. 1981), *cert. denied*, ____ U.S. ____, 102 S.Ct. ____, 70 L.Ed.2d __ [50 U.S.L.W. 3591] (1982); *United States v. Alfrey*, 620 F.2d 551, 555-56 (5th Cir.), *cert. denied*, 449 U.S. 938, 101 S.Ct. 337, 66 L.Ed.2d 160 (1980).[9]

AFFIRMED.

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[9]Appellants' final argument is utterly without merit. They contend that the district court improperly aided the prosecution, thus prejudicing appellants' right to an impartial judge. In point of fact, the district court was merely ensuring that the proper predicate was laid before further testimony by a prosecution witness. Such neutral action is permissible. *See United States v. Bartlett*, 633 F.2d 1184, 1188 (5th Cir.), *cert. denied*, ____ U.S. ____, 102 S.Ct. 101, 70 L.Ed.2d 91 (1981).